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IN THE SUPREME COURT OF THE UNITED STATES

October Term 1982

RENÉ E. LINS
Petitioner

vs.

THE UNITED STATES
Respondent

On writ of certiorari to the
United States Court of Claims

PETITION

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I. Questions presented

1) Whether the petitioner's cause of action to file a civil suit against the respondent on Treasury bill 130.331.B (title) did accrue on Sept. 5, 1974, although he became a defendant to the criminal charges on the same day and on the same issue, or not before Aug. 4, 1978, when the underlying criminal actions became terminated with the petitioner's discharge and his change from a defendant to a plaintiff.

2) Whether the respondent's paramount interest and right of self-preservation against the petitioner's potential illegal claim did outweigh the private interest and right of the petitioner until the date of his discharge.

3) Whether the payment of title was legally or illegally withheld by the respondent on Sept. 5, 1974, when title was presented but not yet surrendered for redemption.

4) Whether the respondent's subpoena and seizure of title on Sept. 6, 1974, based on the charge of conspiracy against the petitioner, did toll the running of the statute of time limitation and did affect the petitoner's cause of action.

5) Whether the Swiss prosecutor's criminal action against the petitioner, initiated by the respondent, had any effect to the accrual of the petitioner's cause of action against the respondent.

6) Whether § 306.25.b. 31 CFR 306, (1973), entered into and became integral part of the contract between the petitioner and the respondent.

7) Whether the case of *US v. Taylor, 104 U.S. 216 (1881),* upon which the dismissal of the petitioner's action rests, is a compareable and applicable case with the case present.

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IV. Jurisdictional statement

1) The date of the judgement sought to be reviewed is September 8, 1982 (which is the date of its entry).

2) Title 28 U.S.C. § 1255 (1) confer on this Supreme Court exclusive jurisdiction to review the judgement by the Court of Claims (No. 594-81-C).

V. Provisions, statutes involved:

Title 28 U.S.C. § 2501:
«Every claim of which the Court of Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues.»

Title 31 U.S.C.A. § 754
«(2) Treasury bills to be issued hereunder shall be offered for sale on a competitive basis, under such regulations and upon such terms and conditions as the Secretary of the Treasury may prescribe, ***»

Title 31 U.S.C.A. § 754 a
«*** Treasury bills *** may, under such rules, regulations, terms, and conditions as the Secretary of the Treasury may prescribe, be used ***»

31 CFR Part 306 (1973): § 306.25.b

«*b) Overdue securities.*
If a bearer security or a registered security assigned in blanc, or to bearer, or so assigned as to become in effect payable to bearer, is presented and surrendered for redemption after it become overdue, the Secretary of the Treasury will ordinarily require satisfactory proof of ownership. (Form PD 1071 may be used).»

31 CFR Part 306 (1973): § 306.126

Waiver of regulations.

«The Secretary of the Treasury reserves the right, in his discretion, to waive or modify any provision or provisions of these regulations in any particular case . . .»

VI. Statement of the case

1) On Oct. 9, 1973, the respondent issued Treasury bill No. 130.331.B (title), due and payable to bearer on presentation (but in accord to *31 CFR 306.25.b* on presentation *and surrender)* for redemption on July 30, 1974.[1]

Title first was acquired by Chase Manhattan Bank of New York, but there title vanished from the bank's vault and surfaced in Switzerland, where the petitioner acquired it without knowledge of defect.

On Sept. 5, 1974, the petitioner presented title to Federal Reserve Bank of New York, which returned it with request for compliance with 31 CFR § 306.25.b (not waived) because title was overdue presented.[2]

On the day of presentation, Sept. 5, 1974, the respondent's F.B.I. announced the seizure of title, and the next day the District Court for the Southern District of New York issued a subpoena based on the charge of conspiracy *(Title 18 § 371)* and the F.B.I., acting in behalf of the court, seized title.[3]

The seizure of title prevented the resubmission of title and the surrender of it accompanied by form PD 1071 to the Federal Reserve Bank.

In consecutiveness of the now pending criminal action, of which the petitioner was a defendant, the respondent initiated the criminal action against the petitioner in Switzerland, where he became charged with receiving stolen goods and try to defraud (similar to the charge of conspiracy). On Aug. 4, 1978, the petitoner became discharged by the Swiss prosecutor who stated that the petitioner did acquire title in accord to law by a business transaction which is protected by the Civil Code, and that the petitioner could not be reproached any inconsiderate or objectionable behaviour.[4]

After his discharge, the petitioner, in his status of a plaintiff, demanded payment of title on Sept. 10, 1978. The respondent,

1) R. Exhibit lit. A
2) R. Exhibit lit. Y-1
and App. to deft's motion, Feb. 26, 1982, page 14
3) R. Exhibit lit. Y-2 (A. page 10)
4) R. Exhibit lit. P (A. page 11)

not refusing payment *expressis verbis*[5], imperatively demanded the petitioner's compliance with the regulations (31 CFR Part 306, issued 1973) and with other conditions of payment. The petitioner's presumption of the respondent's correctness caused him in good faith to make all efforts to comply with the requests, but after the respondent's letter of Jan. 21, 1981, the petitioner filed his declaratory action (No 81-0458) in The District Court for the District of Columbia on Feb. 25, 1981, in order to clarify the rights and duties of both parties.

On Sept. 17, 1981, the District Court transferred the case to the Court of Claims, exercising exclusive jurisdiction in accordance with *Title 28 U.S.C. § 1346 (a) (2)*. On Sept. 8, 1982, the Court of Claims dismissed the petitioner's action as being to late.

2) The Court of Claims (lower court) dismissed the suit based on the case of *US v. Taylor, 104 U.S. 216, 221–22 (1881)*, although that case – by the reasons argued in Part VII 7 on page 17 infra – is not compareable with, or applicable to the case present at bar. (All other cases, to which the court is referring, are, as cases decided by the lower court itself, of no import here).

The weakness of the judgement sought here to be reviewed, may be indicated here in short and argued later on:

The court below did not pay proper attention to the fact, that worldwide prosecuted criminal actions against every possible bearer of title and against the petitioner directly had effects to the legallity or illegallity of the claim and thus to the question of the accrual of the petitioner's claim, its maintainability and enforceability.

The lower court ignored the legal consequences of the seizure of title in the course of a criminal action (brought by the respondent) although the petitioner pleaded such matters very carefully.[6]

5) R. Exhibits lit. L, N, S-1, Sch-1, T, V.
6) R. Pl. opp. to deft's motion, March 26, 1982, pgs. 3–7
6) R. Pl. reply, filed July 2, 1982, pgs. 12–14

The court below deals with this case at bar as if it was a normal case in which a title was presented and not paid, and which became barred by the statute of time limitation. But this case is not that simple, and the lower court should have made proper considerations of the most unusual circumstances of this case. The lower court abused its discretion by reducing the case to a simple matter and this way to let the respondent escape from its liability, although it was the respondent who did not have clean hands and who caused all the troubles the petitioner had to face and to suffer. As more fully will appear in the arguments, the lower court has so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of this Supreme Court's supervision.

VII. Arguments

1) The accrual date of the petitioner's cause of action and the interrelationship of criminal and civil actions:

The lower court holds (at B 4., page 7) that the criminal actions (initiated by the respondent against the petitioner) did not toll the statute of time limitation (Title 28 U.S.C. § 2501) and that, although the criminal investigation might have prevented the petitioner from obtaining a judgement, he could have had filed suit against the respondent. This opinion stands in conflict with applicable cases and with the universally recognized prinziples of justice.

On Sept. 5, 1974, the petitioner had no reason for an immediate suit against the respondent, because the Federal Reserve Bank did not refuse, only delay payment. The bank took § 306.25.b and the requirement of Form PD 1071 (certificate of ownership) as a binding contractual condition for redemption of an overdue presented title, and the same view had and still has the petitioner. But then, title became seized next day. Thus, the completion of the contract was made impossible.

A civil action must be based on a legal claim, no wrongdoer may profit from his own wrong *(Glus. v. Brooklyn, 79 S.Ct. 760 (1959) at 3.)*, therefore no court would have heared a suit, brought by the petitioner as a suspected claimant. Civil cases

are not for the purpose to ascertain the legallity or illegallity of a claim, and therefore the civil court sure had dismissed the petitioner's civil action by lack of stating a claim upon which relief may be granted. The overcrowded dockets of the courts would not have allowed the pendency of the civil case untill (maybe years later) the criminal action is terminated which was commenced in order to ascertain wheter the claim is legal or not. The petitioner as a *defendant* in a criminal case on the same issue as his possible civil action simply was not entitled to commence a civil action after having been charged with conspiracy and after the respondent, on Sept. 6, 1974, seized title and with that the prerequisite instrument of the petitioner's civil claim.

The court below fully ignores the *interrelationship of the criminal and civil actions*, and it turns upside down the main principles of justice, by stating, implicitly, that it does not matter in a civil action whether the claim is legal or not. The question arises, for what criminal actions should be, if not for the purpose to prevent a potential wrongdoer to profit from his own wrong, and to ascertain whether the claim is legal or not. The lower court's opinion, that the criminal actions have no effect to rights (at B 2. page 6) is shocking to universal sense of justice, because of its consequence which would allowe every wrongdoer to profit from his wrong, provided that the civil action is brougt quicker than the criminal action. In other words: the wrongdoer can cash money illegally obtained, spend it, thanks to the help of the civil court, and later it is leaved up to the payer to run behind in order to try to get the money back.

In case of *Shulman v. Miskell, U.S. App.Ct. 626 F. 2d 173 (1980)* the court holds, that the underlying criminal action must be terminated before a claim on malicious prosecution is enforceable. There is no reason why in this case at bar this principle of justice should not apply. Had the petitioner been declared as guilty of a crime or of otherwise illegal transaction, instead of being discharged, sure enough he never would have had a legal claim and thus a cause of action against the respondent, which was not even satisfied by the petitioner's discharge, as documented by the exhibits of the record: lit. L, N, S-1, Sch-1, T, and V.

The time-table, appended page 12 of appendix, shows that the title was presented at the time of worldwide pending criminal actions against any possible bearer of title, initiated by the respondent. When the petitioner presented title on Sept. 5, 1974, he knew that the presentation would expose him to a criminal action and a possible criminal charge. But the petitioner had not to be afraid of that, therefore he presented title, which immediately became seized by the respondent. Later, when the petitoner became discharged in Switzerland on Aug. 4, 1978, he had the substantive legal basis for his civil action against the respondent, which had failed with its criminal action against the petitioner.

2) The paramount interest of the respondent did outweigh the privat interest of the petitioner:

The respondent, as the Government of the United States, has the duty to control crime, and to prevent it, thus it has a paramount interest and right for self-preservation which outweighs the private interest of the petitioner and his rights *(US v. Cotten, U.S. App.Ct., 471 F. 2d 744 (1973)* and *Uphaus v. Wyman, 79 S.Ct. 1042, at 12.)*.

It is one of the duties of every citizen of every country to accept a criminal action brought against him by the Government in its paramount interest, but the Government may not profit from its privilege on the costs of the defendant. In this case at bar the respondent caused a criminal action against the petitioner, to which he could not legally oppose, and when the respondent took the petitioner's property, the title, it took it legally for investigation purposes and for evidence. But in such situation the statute of time limitation must be tolled in favour of the petitioner as a defendant in the criminal action, because such statutes are designed to assure fairness to defendant's *(Belton v. Traynor, 381 F 2 d. 82 at 7)*. The lower court did not care for the fact, that the petitioner on Sept. 6, 1974 until discharge on Aug. 4, 1978, was a defendant and not a plaintiff.

The court below did not make considerations with respect to the respondent's paramount interest, although pleaded by the petitioner properly.[7]

[7] R. Pltf's reply, filed Jul. 2, 1982, page 6

The tolling of the statute of time limitation in favour of the petitioner did not prejudice the respondent, because it had the privilege to use its full legal power against the petitioner in order to ascertain the legallity or illegallity of his claim: the respondent would have profited from that, had the petitioner's claim be declared as illegal, and it did not loose anything, when its criminal action failed. But it would be grossly unfair to give the respondent the privilege referred to and on the other side endanger the petitioner's claim by the running of a time statute against him.

The lower court, by stating, that criminal actions have no effect to the petitioner's rights against the respondent, is destroying the respondent's paramount interest and right, for if the petitioner had the right to sue the respondent notwithstanding the pendency of criminal actions, the respondent in consequence would have had the duty to pay even if it was suspecting the petitioner as a wrongdoer. This, however, is not what the term of justice means.

The right of the respondent to protect itself by means of commencing a criminal action for the reason of ascertaining the legal or illegal basis of the claim by the petitioner, does not preclude its retroactive liability in case the action taken for self-preservation fails, as it is in this case at bar. It is the respondent's problem to weigh its interests and the consequences of its procedure.

Assumed, arguendo, that the petitioner's claim had accrued for a couple of hours on Sept. 5, 1974, even then the statute of time limitations became tolled from the Sept. 6, 1974, on until the discharge of petitioner on Aug. 4, 1978. So or so, the petitioner's action in this case was filed timely.

3) Payment was legally withheld by the respondent:

The aforementioned arguments disclose, that the respondent – in the light of the circumstances – did legally withheld payment on Sept. 5, 1974. The lower court erred in stating, that the Federal Reserve Bank had refused payment (B 3, p. 6).

That bank refused the surrender of title, not payment of it, because it requested the resubmission of title accompanied by the form PD 1071. This is not a refusal of payment, but a invitation to comply with § 306.25.b and an indication that

payment will be made in case of compliance. The lower court is not entitled to state a refusal, although nothing indicate such refusal.[8]

The resubmission of title and its *surrender* (as requested for by § 306.25.b, not waived) was not possible because of the seizure of title by the respondent. The court sees only that title was «retained» by the petitioner, but ignores the seizure, which prevented the accrual of the claim and any suit.

The question here of import is, whether the respondent was obliged to redeem title although it had intention to seize it and bring a criminal charge against the bearer, an idea that was not borne on Sept. 5, 1974, but long before that date. Obviously then, the respondent was not obliged to redeem title on Sept. 5 or 6, 1974, to the petitioner as a defendant to the criminal charge. Payment of title would have had destroyed the respondent's paramount interest for self-preservation, because redemption would have been the acceptance of a claim without question to its legallity. The right to use its full force and power against the petitioner as a suspected wrongdoer prevented the accrual of the obligation to pay. Therefore, payment was legally witheld until the discharge of the petitioner on Aug. 4, 1978.

Assumed, arguendo, the petitioner would have had brought a civil action (although being a defendant in a criminal action on the same issue), the case would have been dismissed and the petitioner would have had faced new charges, as fraud or false statement *(US v. Gilliland, 61 S.Ct. 518 (1941) at 3–4)*. Considering the hard opposition to the petitioner's present suit by the respondent, hard fighting to escape its duty to redeem title, it is easy to imagine what the result had been if the petitioner had brought suit before his discharge.

The lower courts averment, that the petitioner himself did recognize that he was entitled to payment on Sept. 5, 1974, since he seeks interest from that date, is not correct: the petitioner, in order to avoid any misunderstanding, expressively stated, that the interest claim «not accrued» on that date.[9]

[8] A. page 9

[9] R. Second Amended Petition, filed Jan. 20, 1982, page 3 at 13

4) The seizure of title and its legal consequences:

The court below took notice of the fact, that the petitioner's title was seized by the respondent on Sept. 6, 1974, in accord to the announcement the day before. But the court obviously ignores the consequences of the seizure.

Had the respondent not seized title, the petitioner had resubmitted title with form PD 1071 to the Federal Reserve Bank on Sept. 6, 1974, but the respondent's seizure of title prevented that legally, because it was in the light of the circumstances entitled to seize title *(US v. Premises Kown as 608 Taylor Ave, U.S. App.Ct., 584 F. 2d 1297 (1978) at 6–10.*

The respondent as the controller of crime had the right to ascertain by means of the criminal remedies whether the claim brought against it by the petitioner was legal or not. But as a legal consequence the statute of time limitation became tolled in favour of the petitioner untill the termination of the criminal actions on Aug. 4, 1978.

The court below says, that for the petitioner's suit title (the final voucher) was not necessary, but such opinion stands in conflict with the decision in the case of *Bruce Farley Corp. u. Starr v. B. Farley, U.S. App.Ct., 612 F. 2d 1197* which held, that security interest can only be perfected by actual possession of title. In the case present the respondent, however, deprived the petitioner of the actual possession of title, and therefore no suit on title in the hands of the respondent, then a plaintiff, was possible.

The petitioner, exposed to the subpoena as an official command *(Cudahy v. Holland, 62 S.Ct. 651, at 2–3)*, had no paramount interest against the respondent and could not legally oppose the seizure or bring suit against the respondent ignoring the official command and the official act of the seizure. Title could not be used as evidence in a civil case at the same time when title was used by the respondent for evidence against the presenter in the criminal action.

In accord to the case of *US v. Palmieri, U.S. App.Ct., 456 F. 2d 9, (1972) at 9)* the petitioner was not entitled to demand the return of title or for its payment before the termination of the underlying criminal action.

After the termination of the underlying criminal action, of which the petitioner was a defendant, and after the petitioner's

demand for payment of title, made on Sept. 10, 1978,[10] the respondent in its letter from Feb. 26, 1980, the first time acknowledged that the petitioner had acquired title before maturity.[11] The controversy about terms and definitions of the regulations and about other conditions was continued, however, until Jan. 21, 1981.[12]. The acknowledgement made by the respondent was considered by the petitioner as his reinstatement to title, and therefore no demand for the return of title was made, but for the payment of title. If the acknowledgement could not be considered as the reinstatement, the respondent would have been in its duty to return title to the petitioner in accord to the considerations in the case *US v. Premises, 584 F. 2d 1297 (1978) at 6–8* for the termination of the criminal action against the petitioner requests the return of seized property. The respondent would had no right to hold the petitioner's property until a statute of time limitations has elapsed. In this case at bar, however, the acknowledgement referred to above, was the return of the property, and it started the run of the time limitation statute anew. To hold otherwise would mean, that the respondent had taken property from the petitioner without just compensation *(Lynch v. US, 54 S.Ct. 840 (1934) at 5–11)* and such act would constitute a violation of the US-Constitution, Fifth Amendment, which commands, that property may not be taken without making just compensation. Valid contracts are property. Title is a valid contract.

Assumed, arguendo, that the petitioner's claim accrued on Sept. 5, 1974, for a couple of hours until title was seized by the respondent, the act of seizure tolled the run of the applicable time limitation statute. To hold otherwise, as it is held by the court below, would be grossly unfair and in conflict with universally recognized prinziples of justice. Therefore, the lower court abused its discretion by ignoring such a incisive act as the seizure of title , which, of course, has an elementary effect and legal consequences for a civil claim on the same issue, here on the seized title.

The lower court blames the petitioner for not having sued the respondent on Sept. 5, 1974, instead of blaming the respondent

10) R. Exhibit, lit. L
11) R. Exhibit, lit. S-1, page 2
12) R. Exhibit, lit. V

who on that date announced the seizure and the next day seized title, thus prevented the suit. He who prevents a thing from being done may not avail himself of the nonperformance which he has himself occasioned: *Stearns Co. v. US, 54 S.Ct. 325 (1934) at 2.*

5) The Swiss Prosecutors action and its legal effect:

The court below helds that the action by the Swiss Prosecutor did not affect the petitioner's rights under the bill and did not affect those rights (B 2 page 6). Again the question arises for what purpose a criminal action is commenced if not for ascertaining the legallity or illegallity of a civil action. The lower court seems to be of opinion, that it does not matter wheter a civil claim is legal or not.

Assumed, arguendo, that the petitioner would have been declared guilty of a crime or otherwise illegal transaction in obtaining title, he never would have had a cause of action for a civil claim against the respondent. That means, the action by the Swiss prosecutor, initiated by the respondent, had a fundamental effect to the question, wheter the petitioner had a legal claim or not. To held otherwise is turning the main principles of justice upside down.

The lower court considered it as sufficient, to repeat an averment by the respondent, «that there was not enough evidence to prosecute the petitioner» (page 2), instead of paying attention to the statement in the decree: that the petitioner acquired title in accordance with the Civil Code by a legal transaction, and that no inconsiderate or objectionable behaviour can be reproached to the petitioner.[13]

It was the Swiss prosecutor's decree which had caused the respondent to acknowledge «This evidence clearly establishes that you acquired 1000000 Treasury Bill No. 130.331.B before maturity.»[14]

Whithout the decree the petitioner never would have had the substantial basis for his claim against the respondent. Thus, the decree affected the petitioner's rights fundamentally.

[13] R. Exhibit P, A. at [11]
[14] R. Exhibit S-1, page 2

6) The regulations 31 CFR Part 306 as integral part of the contract between the respondent and the petitioner:

The court below helds that compliance by the petitioner with 31 CFR 306.25.b (Treasury Dept. Circ. No. 300, 4.th Rev. issued 1973) was not an element of the accrual of the petitioner's claim against the respondent. The court obviously considers the regulations as not relevant at all, and the arguments in such respects, made by the petitioner [15] are ignored or rejected (B 1, page 5 and B 3, page 6).

That the petitioner is entitled to payment of title, is not the question here, but the time of accrual of the claim as an enforceable claim in a civil court. The court below misconstrues the legal meaning of the regulations.

First: The contract between the respondent and the petitioner consists of a) the title and b) the regulations, which are governing issuance and redemption of title. A condition of a contract, if not waived, demands compliance with it as the completion of the contract. The court below states: «It is the completion of the contractor's work and the resulting entitlement to payment . . . which creates the claim» (III. A, page 4).

Second: § 306.25.b rules overdue presented securities, and as condition of payment of such a title the form PD 1071 may be used. This paragraph could have been waived, but it was not waived, and therefore applicable as a condition of contract. Had the Secretary of Treasury had intention to dropp this condition, he could have done it legally, but he did not waive it.

Therefore the petitioner was requested to comply with the condition of the contract. Was he requested to comply, then the respondent was not obliged to redeem title by lack of fulfillment of the contract by the petitioner.

In general: The lower court helds, that the run of the statute of time limitation could be delayed by filing the certificate. The court, however, overlooks that in a normal case such a certificate would be filed as soon as possible, because a delayed filing

[15] R. Petition, filed Feb. 25, 1981, pages 16–18,
R. Pltf's opposition to deft's motion, filed March 26, 1982, pages 5–7,
Pltf's reply, filed Jul. 2, 1982, pages 10–16

of the form PD 1071 as the completion of the contract in case of an overdue presented title would be to the detriment of the presenter and claimant, but not to the respondent. The loss of interest would be suffered by the presenter, and the respondent could profit from money for which no interest is due. Therefore, a delay of filing the certificate, as required by 31 CFR § 306.25.b (if not waived) as a condition of payment of title, is not the problem of the respondent and it would not be prejudiced. Such reasons made it not necessary for the respondent to fix a time within which the certificate must be filed.

Assumed, arguendo, that there had not been a seizure of title and no criminal action on that issue, the respondent had the opportunity to profit from the delayed filing of the petitioner's certificate of ownership, and the petitioner had no basis to claim any interest for the time between the date of presentation of title and filing of the certificate. The case here, however, is not that simple.

The delay of filing the certificate was caused by the respondent's seizure and the criminal action initiated against the petitioner. As a defendant to the criminal case he was not in a position to file the certificate before he became discharged. But after discharge he filed the certificate and fulfilled a contractual condition of payment of title, and this was the moment when the petitioner's claim accrued (Feb. 16, 1979) if it did not accrue already with the date of the petitioner's discharge on Aug. 4, 1978.

In order to ascertain, whether the petitioner was obliged to comply with § 306.25.b as a contractual condition for payment of title, further arguments are necessary.

The respondent's Secretary of Treasury is authorized by the Congress to promulgate regulations governing US-Treasury securities in order to carry into effect the will of the Congress. A regulation which does not do this, but operates to create a rule out of harmony with the statute, is a mere nullity *(Manhattan Gen. Equipment v. Commissioner of International Revenue, 56 S.Ct. 397, at 2–3,* and *Dismuke v. US, 56 S.Ct. 400, at 4–8).*

Like millions of other people in the USA and abroad, the petitioner relied on the terms and definitions of the regulations, not considering those paragraphs as promulgated for misleading purchasers of US-Treasury securities, but as the integral part of the contract entered with the respondent. The controversy between the petitioner and the officials of the respondent is of no interest here, suffice it, that the contract rules overdue securities and that § 306.25.b was requesting for the certificate of ownership (form PD 1071), and that the petitioner had to comply with that paragraph as a condition for payment of title and that in fact the petitioner did comply, thus causing the obligation of the respondent to redeem title.

The court below refers to a «permissive administrative proceeding» with respect to the matters in question here. But the regulations do not indicate anything with respect to such kind of proceeding, and nothing indicates that compliance with 31 CFR § 306.25.b is only a matter of the mood of the parties to the contract. The Congress did not authorize the respondent's Secretary of the Treasury to promulgate rules and regulations for the purpose to give the respondent an instrument in order to escape from its liability against the credulous purchasers of Treasury securities.

«Where United States has constitutionally and lawfully borrowed money and pledged its credit therefore, the binding quality of the promise is of essence of credit so pledged, and Congress cannot alter or destroy such obligation,» *(Perry v. US, 55 S.Ct. 432, at 6)*. It follows, that if the Congress is not authorized to destroy its obligation, the less would be authorized the Secretary of the Treasury to do so. To promulgate regulations, however, which contain paragraphs only to mislead the petitioner by concealing that compliance is requested only for the purpose of a «permissive administrative proceeding» but in fact without any legal importance, stands in conflict to the considerations of this Supreme Court in the case of *Morgan v. US, 58 S.Ct. 723, at 1–3*, where this Court declared that a party is entitled to be fairly advised of what the respondent proposes, claims or prescribes. The regulations printed and published for information to the public about existing contractual conditions are presumed to be valid and binding. If so, § 306.25.b contains a binding pre-

requisite condition of payment of overdue securities: the submission of the form PD 1071. This certificate was filed by the petitioner after termination of the underlying criminal action on February 16, 1979, and therefore the suit, filed on Febr. 25, 1981, was timely.

7) The case of *US v. Taylor, 104 U.S. 216, 221–22, (1881)*, is not compareable with, or applicable to this case at bar:

The lower court dismissed the suit based on the abovementioned case. There, this Supreme Court had declared, that the demand for payment started the run of the statute of time limitation. But the circumstances of the case at bar. Therefore, the conclusion in the Taylor case is not applicable notwithstanding the circumstances of this present case.

There, the demand for payment was aimed at the payback of a surplus money, deposited in the Treasury, not confiscated. Here, the suit is aimed at the payment of a title which was seized and which was subject matter of foregoing criminal-proceedings. Taylor was not attacked with criminal charges by the respondent.

There, the Secretary of the Treasury was not authorized to fix the time within which Taylor had to demand for payment, but here the Secretary was authorized to promulgate the regulation with § 306.25.b which rules overdue presented securities and in such a case requires the submission of form PD 1071 as a contractual condition made 1973, not 1881.

There, the Secretary acted as a trustee for Taylor, here he had no such status, because the petitioner's title was seized in the course of the criminal action.

The principle, that every case must be decided in the light of its special cirumstances does not allowe to apply a conclusion made in a case which is not compareable at all. The Taylor case, more than 100 years old, may not be used as a basis for the dismissal of the petitioner's suit, based on its own and special circumstances.

VIII. Summary

1) The interrelationship between the criminal and civil actions requires the termination of the underlying criminal action before a civil action on the same issue is commenceable. The lower court ignores the legal consequences and the legal conflicts which arise if on the same issue the parties involved have the status of plaintiffs and of defendants at the same time. The circumstances of this case at bar caused an unusual conflict situation: the respondent, based on its paramount authority used its full power against the petitioner in order to ascertain the legallity of the petitioner's claim as a legal act for the respondent's self-preservation. Title was seized and the petitioner was charged with conspiracy. That situation made it impossible for the petitioner, to commence a civil action against the respondent on the same issue, and therefore the underlying criminal action had to be terminated before the petitioner could commence a civil action against the respondent. The discharge of the petitioner started the run of the statute of time limitation on Aug. 4, 1978, anew, if it ever had begin to run and became tolled by the respondent's criminal actions against the petitioner.

2) The respondent as the controller of crime had a paramount and legal interest which outweighs the private interests of the petitioner, therefore, the respondent was entitled to ascertain the legallity of the petitioner's claim by means of the criminal actions. The lower court did not consider that aspect and its legal consequences. The respondent's privilege may not be used to the detriment of the petitioner, and as a matter of fairness and justice it is required, that the use of the respondent's privilege must toll the run of any statute of time limitation in favour of the petitioner until the termination of the underlying criminal action, initiated by the respondent against the petitioner.

3) The respondent did legally withheld the payment of the petitioner's title on Sept. 5, 1974, because on that date it was not yet due: the petitioner was suspected to be a wrongdoer presenting a possible illegally obtained title which was not surrendered as requested by § 306.25 of the regulations.

Beside that, the contract was not yet completed by the petitioner, because the prerequisite Form PD 1071 for proof of ownership, required by § 306.25.b as an additional condition of payment of overdue presented securites, was not yet submitted by the petitioner to the respondent, which announced on presentation date the seizure of title and seized it the next day, thus preventing the submission of the prerequisite form.

4) The seizure of title on Sept. 6, 1974, tolled the statute of time limitation in favour of the petitioner as the defendant to the criminal charge brought by the respondent. It was impossible for the petitioner to commence and maintain a civil action on the same issue against the respondent, and before the termination of the underlying criminal action, initiated by the respondent and continued in Switzerland until Aug. 4, 1978, the petitioner had no enforceable claim against the respondent.

5) The Swiss prosecutor's criminal action against the petitioner, initiated by the respondent, affected the petitioner's rights under the title, because the result disclosed that the petitioner acquired title legally in accord to law, and that he could not be reproached with any inconsiderate or objectionable behaviour. Thus, the termination of the underlying criminal action removed the bar for the petitioner's civil action against the respondent on Aug, 4, 1978.

6) 31 CFR § 306.25.b constitutes an integral part of the contract between the respondent and the petitioner, and an additional condition applicable to overdue presented securities. The paragraph cited is part of a binding federal law, superseeding inconsistent laws which may be in conflict. The petitioner was obliged to comply with this contractual condition, but he could not comply before his discharge on Aug. 4, 1978, because the respondent's criminal actions prevented compliance by the petitioner as a defendant.

7) The case of US v. Taylor (1881) is not applicable to the present case at bar, because the circumstances of the cases are not compareable at all, and therefore the present case must be decided in the light of its own circumstances.

IX. Conclusion

This Supreme Court should grant certiorari, because the questions presented under No. 1 and 5 have not been, but should be, settled by this Court. The Court of Claims has decided important questions (i.e. No. 2 and 6) in a way in conflict with decisions made by this Supreme Court, and other questions in a way in conflict with compareable decisions by the Courts of Appeals (i.e. No. 3 and 4). This Supreme Court's supervision is called by the interest of the public to the settlement of the questions presented, especially the interest of the potential purchasers of US-Treasury securities justifies the granting of certiorari in order to resolve the legal problemes and the questions presented.

X. Request for judgment

The petitioner respectfully requires this Court to grant certiorari to the Court of Claims, and to reverse the judgment and to remand the case with the direction, that the petitioner's suit was filed timely.

Respectfully submitted:

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